Case 3:05-cv-00597-ECR-RAM Document 25 Filed 11/28/06 Page 1 of 2 FILED RECEIVED ENTERED SERVED ON COUNSEL/PARTIES OF RECORD NOV 28 2006 UNITED STATES DISTRICT COURT DISTRICT OF NEVADA CLERK US DISTRICT COURT RENO, NEVADA DISTRICT OF NEVADA BY. **DEPUTY** 3:05-CV-0597-ECR-RAM GLENN EDWARD FANE, MINUTES OF THE COURT Plaintiff, vs. DATE: NOVEMBER 27, 2006 THEODORE D'AMICO, Defendant. PRESENT: EDWARD C. REED, JR. U. S. DISTRICT JUDGE Deputy Clerk: COLLEEN LARSEN Reporter: NONE APPEARING

MINUTE ORDER IN CHAMBERS

On October 16, 2006, the Magistrate Judge filed a Report and Recommendation (#22) recommending that Defendant's Motion (#10) to dismiss and for summary judgment be denied except with respect to the claim against Defendant in his official capacity.

Counsel for Plaintiff(s) NONE APPEARING

Counsel for Defendant(s) NONE APPEARING

The Objection (#24) to the Report and Recommendation (#22), filed by Defendant, is **OVERRULED**.

The Magistrate Judge's Report and Recommendation (#22) is well taken. IT IS, THEREFORE, HEREBY ORDERED that the Magistrate Judge's Report and Recommendation (#22) is APPROVED and ADOPTED.

IT IS FURTHER ORDERED that Defendant's Motion Dismiss, alternatively for Summary Judgment (#10) is DENIED, except as set forth below.

The Magistrate Judge properly did not consider the affidavit attached to Defendant's Reply (#18) brief. The Plaintiff did not have an opportunity to dispute the affidavit and it should have been filed with the Motion (#10).

The affidavit attached to the Motion (#10) was not based on personal

knowledge and, therefore, it was proper for the Magistrate Judge not to consider the same.

The medical records supporting the affidavits were not attached to them.

IT IS FURTHER ORDERED the Magistrate Judge's recommendation that summary judgment should be granted on Plaintiff's claim against Defendant in his official capacity is proper. IT IS, THEREFORE, FURTHER ORDERED that Defendant's Motion (#10) is granted insofar as the claim against Defendant is in his official capacity.

LANCE	S.	WILSON,	CLERK
Ву		/s/	
Deputy Clerk			